Supreme Court, U.S.
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No. 94-1223

In the Supreme Court of the United States

OCTOBER TERM, 1994

GARY T. BROOKMAN, PETITIONER

v.

ROBERT E. RUBIN,
SECRETARY OF THE TREASURY

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

Whether the court of appeals properly affirmed the district court's denial of petitioner's Rule 60(b) motion.

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OPINIONS BELOW

The decision of the court of appeals (Pet. App. 1) is unpublished, but the decision is noted at 4 F.3d 996 (Table). The decision of the district court (Pet. App. 7-20) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on October 17, 1994. The petition for a writ of certiorari was filed on January 13, 1995. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

In 1990, petitioner filed suit against the Internal Revenue Service, Department of the Treasury (the agency), alleging that the agency discharged him from his position as a revenue agent trainee in violation of the Age Discrimination in Employment Act of 1967, 29 U.S.C. 621 *et seq.* Pet. App. 8; Pet. 6. On April 27, 1992, after a two-day bench trial, the United States District Court for the Northern District of Illinois concluded that petitioner failed to present a prima facie case of discrimination, and that the agency's reason for firing petitioner was not pretextual. Pet. App. 18-19. Petitioner appealed, and on August 27, 1993, the Seventh Circuit affirmed the district court's decision. *Id.* at 6.[1] Petitioner then filed a petition for a writ of certiorari (No. 93-846) in this Court. On January 10, 1994, this Court denied certiorari, 114 S. Ct. 698. Pet. 7.

On June 15, 1994, five months after this Court denied certiorari, petitioner filed a motion in the district court under Federal Rules of Civil Procedure 60(b)(6) and 80(c). Memorandum in Support of Appellant's Motion 1 (June 15, 1994); Pet. App. 1.[2] Although the bases for his

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[1] On appeal, petitioner challenged the district court's findings of fact, but he failed to provide the court of appeals with a trial transcript. Under those circumstances, the court was unable to ascertain whether the district court's factual findings were erroneous. Consequently, the court affirmed. Pet. App. 4-5. The court also affirmed the district court's legal determination that petitioner had failed to establish a prima facie case of age discrimination. *Id.* at 5-6.

[2] Rule 60(b)(6) permits a court to relieve a party of a final judgment "[o]n motion and upon such terms as are just * * * for * * * (6) any other reason justifying relief from the operation of the judgment."

Rule 80(c) provides: "Whenever the testimony of a witness at a trial or hearing which was stenographically reported is admissible

motion are difficult to discern, petitioner apparently requested both that the district court supplement the record by providing the Seventh Circuit with a full trial transcript (Memorandum in Support of Appellant's Motion 5-8) and that the district court vacate its decision of April 27, 1992, and allow petitioner to explain the district court's "judicial errors" through additional briefing. *Id.* at 8-10. The district court denied the motion. It held that petitioner did not bring the motion within a reasonable time as required by Rule 60(b). Minute Order, June 15, 1994. Alternatively, the court concluded that petitioner failed to state adequate grounds for overturning the district court's prior judgment and that no appeal was pending in the court of appeals that required a supplemental record. See Minute Order, June 15, 1994.

On appeal, the court of appeals characterized petitioner's motion under Rules 60(b) and 80(c) as one for summary reversal, and held that the district court did not abuse its discretion in denying the motion. Pet. App. 1.

ARGUMENT

The petition for writ of certiorari presently before this Court essentially reproduces the petition previously filed by petitioner and denied by this Court on January 10, 1994. The current petition presents the identical age discrimination question for review (93-846 Pet. 1; 94-1223 Pet. 1) and includes a verbatim recitation of the statements and arguments made in the body of the prior petition.[3]

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in evidence at a later trial, it may be proved by the transcript thereof duly certified by the person who reported the testimony."

[3] Compare 93-846 Pet. 4-6 with 94-1223 Pet. 5-7; and 93-846 Pet. 6-17 with 94-1223 Pet. 9-20.

Petitioner's only argument purporting to address the court of appeals' October 17, 1994, decision affirming the district court's denial of petitioner's Rule 60(b) motion (Pet. 25), seeks reversal of the Seventh Circuit's August 27, 1993, decision (Pet. App. 3-5), which this Court decided not to review in 1994. When reviewing a district court's Rule 60(b) determination, an appellate court considers only "whether the denial of the motion was an abuse of discretion; [it] cannot reach the merits of the underlying judgment." *Lee* v. *Village of River Forest*, 936 F.2d 976, 979 (7th Cir. 1991). Relief under Rule 60(b) is merited "only upon a showing of extraordinary circumstances that create a substantial danger that the underlying judgment was unjust." 936 F.2d at 978. Petitioner fails to present any question regarding the interpretation or meaning of Rule 60(b), to make any substantial argument that he is entitled to relief under Rule 60(b), or to demonstrate that the issue has any importance beyond his own situation. See 1B James Moore, Jo Lucas & Thomas Currier, *Moore's Federal Practice* ¶ 0.404[4.-4], [4.-6] (2d ed. 1994).

Moreover, petitioner filed his Rule 60(b) motion with the district court more than two years after the judgment in this case was rendered. As the district court held, petitioner failed to seek the requested relief within a reasonable time as required by Rule 60(b). The court of appeals correctly determined that the district court's order denying relief did not constitute an abuse of discretion. See *McKnight* v. *United States*, 726 F.2d 333, 335 (7th Cir. 1984) (abuse of discretion established only when no reasonable person could agree with the district court).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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